

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CIVIL ACTION
	:	
v.	:	(Crim. No. 93-138-06)
	:	
JACKIE K. ROBINSON	:	No. 96-8558

MEMORANDUM AND ORDER

J. M. KELLY, J.

JUNE , 2000

Presently before the Court is an unopposed Motion for Relief from Judgment Due to Extraordinary Circumstances filed by Jackie Robinson (“Robinson”) pursuant to Federal Rule of Civil Procedure 60(b). He seeks post-conviction relief arguing that the Court incorrectly construed a letter he wrote as one seeking advice, when really it was intended to amend his then-pending motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (1994). For the following reasons, Robinson’s motion is denied.

I. BACKGROUND

In approximately September of 1993, Robinson plead guilty to various drug charges. Following his sentencing, he unsuccessfully appealed to the United States Court of Appeals for the Third Circuit. On March 7, 1997, Robinson then filed a motion pursuant to § 2255 to Vacate, Set Aside or Correct Sentence. In it he raised several arguments challenging his conviction, but he did not argue ineffective assistance of counsel. On approximately March 12, 1997, however, Robinson wrote a letter to this Court. In it, he inquired about his pending habeas petition and asked the Court whether he would be allowed to raise other issues, namely an ineffective assistance of counsel argument, at a later date. The Court responded that it was not in a position

to give advice to any litigant, but that it was “usually a wiser position to file all your reasons at one time, rather than in a piecemeal fashion.” Mot. for Relief from J. Due to Extraordinary Circumstances, Ex. 2.

The habeas petition as it was originally filed was then referred to Magistrate Judge Diane M. Welsh, who summarily dismissed the motion pursuant to Rule 4 of the Rules governing § 2255 motions. Over Robinson’s objections, this Court adopted the Report and Recommendation of Judge Welsh and dismissed Robinson’s habeas petition. Robinson then twice sought a certificate of appealability and was twice rejected. In moving for a certificate of appealability, Robinson first argued that he was deprived of his constitutional right to effective assistance of counsel.

Having been unsuccessful in his attempts to appeal the dismissal of his § 2255 motion, Robinson then filed a motion to reconsider, which was denied. His motion for a certificate of appealability was similarly denied, as was his motion to the Court of Appeals to file a second or successive habeas petition. Finally, after having struck out at all of the past four and one-half years’ attempts to challenge his guilty plea, Robinson has filed the instant motion for relief from judgment due to extraordinary circumstances pursuant to Federal Rule of Civil Procedure 60(b).

II. DISCUSSION

Robinson’s sole argument appears to be that the Court misconstrued his March 1997 letter as a request for advice on pursuing his § 2255 motion. He contends, instead, that the letter, while inartfully drafted, was either a motion to amend or an amendment to his § 2255 motion in which he raises his ineffective assistance of counsel argument. Because the Court did not consider his pro se status and broadly construe this writing, Robinson claims he is entitled to

relief from the judgment summarily dismissing his § 2255 motion.

Robinson raises the instant motion in the context of Rule 60(b), governing relief from judgment or order for, among other things, mistake, inadvertence or any other justifying reason. See Fed. R. Civ. P. 60(b). The Court need not address the merits of Robinson's Rule 60(b) claim, however, because it finds that under that rule, his instant motion is not timely.¹ Rule 60(b) states that "[t]he motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered or taken." Id. The judgment Robinson seeks to be relieved from was entered on April 22, 1997. The instant motion was filed December 20, 1999. In it, Robinson seems to argue that he is entitled to relief under

¹ Even addressing the merits, the Court finds Robinson has not stated any grounds for relief pursuant to Rule 60(b). Even construing his March 1997 letter liberally and giving him the benefit of every doubt, it is apparent that at that time, he was merely asking for advice and not in any way attempting to amend his habeas petition. The relevant portions of the letter state:

Now comes Jackie Robinson, to move this Honorable Court to answer a question for him as a result of the Court construing his petition under 28 U.S.C. [§] 2241 as a motion under 28 U.S.C. [§] 2255.

The undersigned is concerned with the deadline of April 24, 1997 for all motions under 28 U.S.C. [§] 2255 for people whose final appeal has been more than a year prior to the enactment of the new law.

My problem is this, I had planned to file a motion 2255 for plea not knowingly and intelligently [sic] entered as a result of ineffective assistance of counsel. I was beginning to gather the necessary information to file a proper and meritorious motion, but as the court knows this takes time.

...

I am aware that the Court must address the jurisdictional challenge before it can address any other issues, although the undersigned is confident his jurisdictional challenge will not fail, I must find out whether or not I will be allowed to file my other issues with the court, at a later date, should it be necessary. I ask this Honorable Court for some guidance and answers to my questions.

Mot. for Relief from J. Due to Extraordinary Circumstances, Ex. 1. Furthermore, this is the first time Robinson has argued that this letter was actually an attempt to amend his § 2255 motion.

subsection (1) and (6), the former allowing relief for mistake or inadvertence, the latter for any justifying reason. See id. To the extent that Robinson complains of a mistake by the Court, clearly his motion is untimely as it was filed over one and one-half years after the one-year time limit. To the extent Robinson's motion is based on the Court's ability to grant relief pursuant to "any other reason justifying relief," the Court also finds it to be untimely. Id. As noted above, the instant motion was filed over two and one-half years after his § 2255 motion was dismissed. During that time, Robinson sought reconsideration of the Court's decision, both by this Court and the Court of Appeals, a total of five times, all of which were unsuccessful. Accordingly, Robinson's motion is denied.

Furthermore, even were the instant motion timely filed, the Court finds that while characterized as a Rule 60(b) motion, it is nothing more than an attempt to bring a second or successive post-conviction motion wherein Robinson attempts to raise an argument not previously asserted, namely ineffective assistance of counsel.² It is well established that where a Rule 60(b) motion is the "practical equivalent" of a successive habeas petition, it is subject to the same rules governing such petitions. See, e.g., Landano v. Rafferty, 897 F.2d 661, 668 (3d Cir. 1990). Therefore, the provisions of the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") apply.

In enacting the AEDPA, Congress altered the method by which prisoners may obtain relief on a second or successive § 2255 motion. Pursuant to § 2244:

No . . . district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a

² Indeed, attached to the instant motion is Robinson's proposed ineffective assistance of counsel claim.

court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

28 U.S.C. § 2244(a). Section 2255 provides that in order for a district court to consider a second or successive motion, it must be certified by the court of appeals to contain either:

(1) [N]ewly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255. Accordingly, in order to bring a second or successive motion under § 2255, the petitioner must first apply to the court of appeals for authorization to proceed. Robinson's petition for authorization was denied, as is the instant motion.

This is the case notwithstanding Robinson's argument that the instant motion is not successive because it does not raise new claims that were not in the original § 2255 motion. Essentially he claims that, by way of his letter, the ineffective assistance of counsel claim was raised in the first motion and that the Court, by misconstruing his letter, merely overlooked it. As discussed previously, however, there is nothing from which the Court could conclude that Robinson was seeking to amend his § 2255 motion. He certainly inquired about the propriety of raising his claim at a later date, but at no point did he indicate, nor does the letter contain, any attempt to amend the motion. As such, Robinson's motion is denied.

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ORDER

AND NOW, this day of June, 2000, in consideration of the unopposed Motion for Relief from Judgment Due to Extraordinary Circumstances filed by Jackie Robinson, it is ORDERED that the motion is DENIED. Furthermore, there is no cause to issue a certificate of appealability.

BY THE COURT:

JAMES MCGIRR KELLY